

In the United States
Circuit Court of Appeals
for the Ninth Circuit

HAVILAH SMITH HAWKINS,)	
Appellant,)	
vs)	No. 11277
UNITED STATES OF AMERICA,)	
Appellee.)	
KEMPER NOMLAND, JR.,)	
Appellant,)	
vs)	No. 11278
UNITED STATES OF AMERICA,)	
Appellee.)	
JOHN FRANK RANDALL,)	
Appellant,)	
vs)	No. 11279
UNITED STATES OF AMERICA,)	
Appellee.)	

COMBINED BRIEF OF APPELLEE

Upon Appeal from the District Court of the United States
for the District of Oregon.

HENRY L. HESS,
United States Attorney.
EDWARD B. TWINING,
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BRIEF FOR THE UNITED STATES

These are appeals from Judgments of the United States District Court for the District of Oregon, convicting the defendants—appellants of violating Section 11 of the Selective Service and Training Act of 1940, as amended, (50 U.S.C. App. 311).

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Selective Training and Service Act of 1940, as amended (50 U.S.C. App. 301 et seq.), provide:

SEC. 10 (a) * * *

(2) * * * Such local boards, under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe * * *

SEC. 11. Any person * * * who in any manner shall knowingly fail or neglect to perform any duty required of him under or in execution of this Act, or rules or regulations made pursuant to this Act * * * shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment * * *

The pertinent provisions of the Selective Service Regulations provide:

SEC. 653.12 Assignees shall report to the camp to which they are assigned or transferred; remain therein until released or transferred elsewhere by proper authority * * * comply with any order to transfer from

one camp or project to another, and leave the camp or project from which they are transferred and proceed and report to the camp or project to which they are transferred in accordance with such orders * * *

QUESTION PRESENTED

Whether the record of these cases discloses any evidence of illegal or arbitrary classification or infringement of appellants' legal rights.

ARGUMENT

The transcript of evidence and exhibits in these cases clearly disclose that all of the appellants claimed to be Conscientious Objectors, asked for the classification of 4E, and received that classification. There is no evidence of any other contention on the part of the appellants before they were classified, and they reported at Civilian Public Service Camps and remained there for a long period of time. It is apparent that the real basis of the appellants' contention is that they do not approve of the Selective Service Act and did not desire to conform to its provisions. In view of the complete lack of any evidence indicating improper conduct on the part of the Draft Boards, or any other person or persons, it is difficult to imagine how the trial court could have directed a verdict of not guilty, or could have submitted any question concerning the classification of appellants. No objection whatever was made to the trial court's instruction to the jury.

The Public Service Camps were established in accordance with law. The utilization of persons holding regular Army Commissions in the over-all administration affecting Conscientious Objectors was in no way an interference with any right of appellants under the Act. *Kramer v. United States*, 147 F. 2d 756, certiorari denied, 324 U. S. 878, and *Roodenko v. United States*, 147 F. 2d 752, certiorari denied, 324 U. S. 860.

CONCLUSION

The judgments of conviction should be affirmed.

Respectfully submitted,

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United States Attorney.

EDWARD B. TWINING,

Assistant United States Attorney.